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**OFFICE OF PETITIONS**

In re Application of :  
David A. Sirbasku :  
Application No. 09/852,958 : DECISION ON PETITION  
Filed: May 10, 2001 :  
Attorney Docket No. 7219.007 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 13, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed June 14, 2006, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time was obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on December 15, 2006. A Notice of Abandonment was mailed on February 28, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).. Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR

1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The instant petition does not satisfy item (1). In this regard, it is noted that the RCE submitted with the petition is dated July 7, 2006 and references a previous submission under 37 CFR 1.114. As the final rejection was mailed on June 14, 2006 and no reply/amendment was filed after the mailing thereof or prior to the RCE dated July 7, 2006, the RCE is improper since a submission responsive to the June 14, 2006 final Office action has not submitted. The only previous submission would have been filed on December 27, 2005, which was the subject of the final rejection of July 14, 2006. Accordingly, an RCE, along with a submission under 37 CFR 1.114 or which properly references a previous submission, such as the submission of December 14, 2006, should be submitted in order for the RCE to be considered to have a proper submission.

It is noted that the RCE filed with the petition was not accompanied by the \$395 fee therefor. However, while Office finance records for this file disclose receipt of a \$395 RCE fee on December 14, 2006, the record fails to show that an RCE was in fact filed on that date. Therefore, as no RCE was filed, the \$395 fee submitted on December 14, 2006 will be applied towards any future RCE.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:           Mail Stop PETITION  
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The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

A handwritten signature in cursive script, appearing to read "Frances Hicks".

Frances Hicks  
Petitions Examiner  
Office of Petitions